

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 23 May 2006

Case No. 2005-STA-54

In the Matter of:

DWIGHT TOLAND,
Complainant,

v.

PRO DRIVERS,
Respondent.

Appearances:

For the Complainant:

Dwight Toland, *Pro Se*
Westerville, Ohio

For the Respondent:

Michael S. Glassman, Esquire
Cincinnati, Ohio

Before:

Joseph E. Kane
Administrative Law Judge

RECOMMENDED ORDER APPROVING SETTLEMENT

This case arises under Section 405, the employee protection provision, of the Surface Transportation Assistance Act of 1982 (hereinafter "STAA"), 49 U.S.C.A. § 31105, and the implementing regulations at 29 C.F.R. Part 1978 (2004). The parties have filed a request for approval of their settlement agreement and dismissal of the complaint with prejudice.¹

¹On May 19, 2006 the parties requested a telephone conference with the undersigned, which was conducted on May 22nd. The conference concerned matters voiced by Complainant, including a perception that the hearing process was unfair, particularly the discovery and settlement procedures. Complainant also voiced dissatisfaction with respect to my Order of April 28, 2006 prohibiting *ex parte* communications with the administrative law judge or staff members; concern about an Order dated May 11, 2006, requiring submission of the settlement agreement to the administrative law judge for approval per 20 C.F.R. § 1980.111 (d)(2); and a concern about the timing of the execution of the terms of the settlement agreement. He also stated that he was hampered by a lack of attorney representation and raised factual issues concerning his case, which I stated were not appropriate to my consideration of the appropriateness of the

Pursuant to section 31105(b)(2)(C) of the STAA, "[b]efore the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation." Under regulations implementing the STAA, the parties may settle a case at any time after the filing of objections to the Assistant Secretary's findings "if the participating parties agree to a settlement and such settlement is approved by the Administrative Review Board . . . or the ALJ." 29 C.F.R. §1978.111(d)(2). Under the STAA a settlement agreement cannot become effective until its terms have been reviewed and determined to be fair, adequate, and reasonable, and in the public interest. *Tankersly v. Triple Crown Services, Inc.*, 1992-STA-8 (Sec'y Feb. 18, 1993). Consistent with that required review, the regulations direct the parties to file a copy of the settlement "with the ALJ or the Administrative Review Board as the case may be." *Id.*

I have carefully reviewed the parties' General Release (hereinafter, "Agreement") and have determined that it constitutes a fair, adequate and reasonable settlement of the complaint and is in the public interest. Pursuant to 29 C.F.R. § 1978.109(c), however, the Administrative Review Board must issue the final order of dismissal of a STAA complaint resolved by settlement. *See Howick v. Experience Hendrix, LLC*, ARB No. 02-049, ALJ No. 2000-STA-32 (ARB Sept. 26, 2002).

The Agreement encompasses the settlement of matters under laws other than the STAA. *See* para. 5. The Board's authority over settlement agreements is limited to such statutes as are within the Board's jurisdiction and is defined by the applicable statute. Therefore, I approve only the terms of the agreement pertaining to the Complainant's STAA claim. *Fish v. H and R Transfer*, ARB No. 01-071, ALJ No. 00-STA-56 (ARB Apr. 30, 2003). Here, the parties have certified that the agreement constitutes the entire settlement agreement with respect to the Complainant's claims. *See* Settlement Agreement, para. 15.

Paragraphs 10 and 11 of the agreement provide that the parties shall keep the terms of the settlement confidential, with certain specified exceptions. I emphasize that "[t]he parties' submissions, including the agreement, become part of the record of the case and are subject to the Freedom of Information Act (FOIA), 5 U.S.C.A. § 552. FOIA requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act." *Coffman v. Alyeska Pipeline Serv. Co. and Arctic Slope Inspection Serv.*, ARB No. 96-141, ALJ Nos. 96-TSC-5, 6, slip op. at 2 (ARB June 24, 1996). Department of Labor regulations provide specific procedures for responding to FOIA requests, for appeals by requestors from denials of such requests, and for protecting the interests of submitters of confidential commercial information. *See* 29 C.F.R. Part 70 (2004).²

settlement agreement pursuant to 29 C.F.R. § 1980.111 (d)(2). Upon inquiry, Complainant stated he did execute and sign the settlement agreement and did not request to withdraw his agreement to the settlement.

² "Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the

Accordingly, **IT IS RECOMMENDED** that the Administrative Review Board **APPROVE** the Agreement and **DISMISS** the complaint with prejudice.

A

JOSEPH E. KANE

Administrative Law Judge

NOTICE OF REVIEW: The administrative law judge's Recommended Order Approving Settlement, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. *See* 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within thirty (30) days of the date of issuance of the administrative law judge's Recommended Order, the parties may file briefs with the Board in support of, or in opposition to, the administrative law judge's order unless the Board, upon notice to the parties, establishes a different briefing schedule. *See* 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.

The relief ordered in the Recommended Order Approving Settlement is stayed pending review by the Secretary. 29 C.F.R. § 1978.109(b).

submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h)." *Coffman*, slip op. at 2, n.2.